

**SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2009-0283-AIR**

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
WHITE STALLION ENERGY	§	
CENTER, LLC	§	OF
APPLICATION FOR AIR QUALITY	§	
PERMIT NOS. 86088, HAP28, PAL26	§	
AND PSD-TX-1160	§	ADMINISTRATIVE HEARINGS

**APPLICANT WHITE STALLION ENERGY CENTER, LLC'S
RESPONSE TO EXCEPTIONS**

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TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE ADMINISTRATIVE LAW JUDGES:

The statutory parties filed few exceptions: Both White Stallion and the Executive Director explained why none of the Judges' three reservations¹ justify withholding permit issuance, and why the Commission should change none of the performance standards in the Draft Permit.² OPIC filed no exceptions at all.

Conversely, the protesting parties' exceptions are numerous and wide-ranging. But most fall into one or more of the following three categories, none of which warrant response:

Category 1: Criticisms leveled not at the specifics of White Stallion's application, but at longstanding TCEQ policies and practices

Environmental Defense Fund and Sierra Club have, for years, tried to use individual air permit proceedings to advocate for changes in TCEQ's permitting policies. This case is no different. Many of their exceptions are nothing more than arguments

¹ Regarding the ozone analysis, coal dust impacts, and HCl and HF performance standards.

² White Stallion does admit the propriety of one small change, specifically the Draft Permit limits on sulfuric acid mist emissions while using pet coke. White Stallion has committed to meet 0.016 lb/MMBtu (3-hour average), instead of the 0.022 lb/MMBtu, limit in the Draft Permit. See White Stallion's Exceptions at pp. 29-31.

about what they believe the Commission *should* require of air permit applicants, as opposed to what it actually *does* require, which the Commission has articulated in innumerable prior proceedings. These include EDF's and Sierra Club's exceptions on the topics listed below, all of which the Judges already addressed and rejected. Out of respect for the Commission's time and attention, White Stallion does not re-argue these issues here, but instead refers to their treatment in previous briefs (note that Sierra Club did not see fit to paginate its Exceptions, making it necessary to physically count pages to find the referenced text in its filing):

- TCEQ's ozone evaluation technique³
- TCEQ's BACT determination process⁴
- TCEQ's reliance on the PM₁₀/PM_{2.5} surrogacy policy⁵
- TCEQ's MACT determination process⁶
- TCEQ's PAL rules⁷
- TCEQ's requirements for monitoring particulate matter emissions⁸

³ See EDF's Exceptions at pp. 4-10 and Sierra Club's Exceptions at pp. 2-5. For White Stallion's discussion of this topic, see its Closing Argument at pp. 4-23 and its Response to Closing Arguments at pp. 1-4.

⁴ See EDF's Exceptions at pp. 16-18 and Sierra Club's Exceptions at pp. 5-7. For White Stallion's discussion of this topic, see its Closing Argument at pp. 47-64 and its Response to Closing Arguments at pp. 1-2 and 5-7.

⁵ See EDF's Exceptions at pp. 10-11. For White Stallion's discussion of this topic, see its Closing Argument at pp. 23-25 and its Response to Closing Arguments at pp. 1-2.

⁶ See EDF's Exceptions at pp. 22-23 and Sierra Club's Exceptions at 14-18. For White Stallion's discussion of this topic, see its Closing Argument at pp. 105-117 and its Response to Closing Arguments at pp. 1-2 & 7-9.

⁷ See EDF's Exceptions at p. 24 and Sierra Club's Exceptions at p. 18. For White Stallion's discussion of this topic, see its Closing Argument at pp. 125-127 and its Response to Closing Arguments at pp. 1-2.

⁸ See EDF's Exceptions at pp. 23-24. For White Stallion's discussion of this topic, see its Closing Argument at pp. 120-125.

- TCEQ's requirements for optimization of permit limits based on post-startup testing results⁹

Category 2: Issues on which there was a battle of experts decisively lost by the protesting parties

Each of EDF's and Sierra Club's exceptions on the following topics was the subject of a battle of experts rightly decided by the Judges who heard the case:

- Adequacy of ozone evaluation¹⁰
- BACT determination for NO_x¹¹
- BACT determination for SO₂¹²
- BACT determination for PM₁₀/PM_{2.5}¹³
- BACT determination for CO¹⁴
- BACT determination for VOC¹⁵
- Receptor grid for PM modeling¹⁶

⁹ See EDF's Exceptions at p. 23. For White Stallion's discussion of this topic, see its Closing Argument at pp. 118-120.

¹⁰ See EDF's Exceptions at pp. 4-10 and Sierra Club's Exceptions at pp. 2-5. For White Stallion's discussion of this topic, see its Closing Argument at pp. 4-23.

¹¹ See EDF's Exceptions at pp. 18-19 and Sierra Club's Exceptions at pp. 7-12. For White Stallion's discussion of this topic, see its Closing Argument at pp. 64-77 and its Response to Closing Arguments at pp. 5-7.

¹² See EDF's Exceptions at pp. 19-20 and Sierra Club's Exceptions at pp. 12-13. For White Stallion's discussion of this topic, see its Closing Argument at pp. 77-84.

¹³ See EDF's Exceptions at pp. 20-21 and Sierra Club's Exceptions at pp. 13-14. For White Stallion's discussion of this topic, see its Closing Argument at pp. 84-92.

¹⁴ See Sierra Club's Exceptions at p. 14. For White Stallion's discussion of this topic, see its Closing Argument at pp. 95-98.

¹⁵ See EDF's Exceptions at p. 21. For White Stallion's discussion of this topic, see its Closing Argument at pp. 98-99.

¹⁶ See EDF's Exceptions at pp. 11-14. For White Stallion's discussion of this topic, see its Closing Argument at pp. 25-36.

- Alleged reliance on Special Condition No. 45 in conducting BACT analysis¹⁷
- MACT determinations¹⁸
- PM CEMS¹⁹

Category 3: Issues already addressed in White Stallion's Exceptions

The third category of protesting parties' exceptions are those that White Stallion addressed in its own Exceptions (pertaining to the monitoring data used in ozone evaluation, coal dust impacts assessment, and the Draft Permit's limits for particulate matter, carbon monoxide and sulfuric acid mist). Any response to these exceptions would repeat what White Stallion already filed, and we will not so burden the Commission and the Judges.

This leaves only three exceptions made by the protesting parties and not subsumed in one or more of the above categories: (1) multiple site plans, (2) newly promulgated NAAQS (raised for the first time in these proceedings by EDF in its Exceptions), and (3) transcript costs. We address each separately below:

I.

ONLY ONE SITE PLAN IS RELEVANT TO THESE PROCEEDINGS

EDF's most prominent argument is that, because the site plans in White Stallion's subsequently filed Section 404 and wastewater permit applications are very slightly different than the one in its air permit application, neither SOAH nor the Commission can

¹⁷ See EDF's Exceptions at p. 23. For White Stallion's discussion of this topic, see its Closing Argument at pp. 118-120.

¹⁸ See EDF's Exceptions at pp. 22-23 and Sierra Club's Exceptions at pp. 14-18. For White Stallion's discussion of this topic, see its Closing Argument at pp. 105-117 and its Response to Closing Arguments at pp. 7-9.

¹⁹ See EDF's Exceptions at pp. 23-24. For White Stallion's discussion of this topic, see its Closing Argument at pp. 120-125.

move forward on the air permit application. The Judges rightly reject that argument for two reasons. First, this hearing was convened to evaluate the air permit application direct-referred by TCEQ to SOAH, not any other applications submitted for consideration by TCEQ or other agencies under different regulatory programs.²⁰ Second, its President and CEO, Frank Rotondi, testified that White Stallion is prepared to build the project as described in the air permit application.²¹ To the Judges' reasons for rejecting EDF's argument, we will add one more.

Regarding the Judges' first basis, EDF asserts that the Judges are confused—that it was White Stallion, not TCEQ, that made the referral. EDF is the one that is confused. White Stallion requested direct referral by letter to TCEQ, but it was TCEQ that actually referred the application to SOAH. Any doubts about which is the referring entity in a direct referral to SOAH, and which application is properly the subject of the resulting hearing, are resolved by reference to the applicable statute: "... the *commission*, on the request of the applicant or the executive director, shall refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether *the application* complies with all applicable statutory and regulatory requirements."²² By the time the White Stallion Energy Center is built, White Stallion will have submitted applications for many types of authorizations to multiple governmental bodies. But there is no doubt that, in this case, "the application" that TCEQ direct-referred to SOAH under § 5.557(a) was the air permit application.

²⁰ PFD at p. 13.

²¹ *Id.* For record citations to Mr. Rotondi's testimony, see Tr. at 77:9-78:6, 84:12-23 & 89:6-10 (Rotondi on cross).

²² TEX. WATER CODE § 5.557(a) (emphasis added).

As for the Judges' second basis, EDF expresses concern that Mr. Rotondi's testimony "leaves open the possibility that [White Stallion] intends to maximize mitigation of forested wetlands as represented in its subsequently filed Section 404 Permit Application and later amend, revise or alter its Air Permit Application."²³ First, it seems odd that EDF would fear any efforts by White Stallion to "maximize mitigation of forested wetlands"—Environmental Defense Fund's name suggests that it would support such efforts. But even if EDF's fears of rampant wetlands protection were someday realized, and White Stallion were to formally adopt a site plan reflecting adjustments to the one contained in the air permit application to accomplish that mitigation, it would be neither unusual nor improper. Adjustments to the layout of a project are a normal part of project development spanning over several years; in fact, it is quite possible that the exact locations of equipment at the as-built WSEC will not precisely conform to the site plans depicted in *any* of its currently pending applications. Judge Qualtrough clearly appreciated both the fluid nature of project development and the need to avoid stopping and starting over each time an applicant considers minor adjustments to its site layout:

Mr. Weber, why don't we go this way. Why don't you distribute your information, let everybody see it. Let the ED staff see it. I mean, if you're just moving the material handling locations – I mean, we don't know the scope of the proposed changes, and to be honest with you, I don't see how anybody could ever get a permit issued if everything has to match.

I mean, you've got – this permit is going forward, and the applicant is making representations regarding these emissions. And, yeah, there's other federal permits that he's going to have to obtain; federal, state, whatever other authorizations they'll need. So something has got to go first, and, yeah, there may be changes to the layout.

²³ EDF Exceptions at p. 3.

I mean, it's my understanding that what's proposed in the application is not the final engineered design of this facility. They don't know what to engineer to at this point in time. They don't have a permit here yet.

So this is what we're suggesting, that you go ahead and hand out your information, these permit applications that you say are conflicting or drastically modify this application. And we're going to let the ED staff look at it and see if they can – you know, if it's, you know – do you see what I'm saying? I mean, we're getting into the point where how far have they changed it, where the changes are just a necessity in these type—when you have a huge facility like this that needs a whole slew of permits.²⁴

TCEQ also understands these realities of project development, as it has included in the Draft Permit a Special Condition (No. 44) requiring White Stallion to submit, at least 30 days prior to startup, “as-built information” including “change pages to the permit application reflective of the final plans and engineering specifications” and “[r]evised plot plans and equipment drawings as required to reflect the constructed facility.”²⁵ This provision, boilerplate in air permits issued by TCEQ, accounts for exactly the type of minor adjustments reflected in the differences in the site plans pointed out by EDF.

And they are very minor adjustments. The only emission sources that have different locations in the two site plans are particulate matter emission sources associated with the handling of fuel and limestone, and they are only further away from the property lines in the site plan depicted in the Section 404 and wastewater discharge applications.²⁶ As Mr. Rotondi explained, these minor adjustments have been proposed as possible ways

²⁴ Tr. at 20:1-21 (Judge Qualtrough in response to EDF's motion to dismiss made on the record at the beginning of the hearing on the merits).

²⁵ Executive Director Ex. ED-14 (Draft Permit), Special Condition No. 44.

²⁶ See EDF Exs. 121-123.

to minimize impacts to forested wetlands.²⁷ No other pollutants and no other sources proposed for the plant are affected by the differences between the two site plans.²⁸ In fact, the locations of the main emission sources at the site are identical in the two site plans.²⁹ There is simply no meaningful difference from an air quality perspective, except changes that even a lay reviewer would understand to *reduce* PM impacts associated with material handling sources (moving them further from the property lines). While it might have been overkill, White Stallion sought to prove this self-evident point with expert testimony, but the Judges sustained EDF's objection, and limited White Stallion to a formal offer of proof on the topic.³⁰

White Stallion has applied for authorization to construct the facilities described in its air permit application in accordance with the terms of the Draft Permit, which contemplates and accounts for the possibility of as-built changes. If and when White Stallion needs TCEQ permission to make conforming changes to whatever the site plan may become, it will do so in accordance with the process expressly created for that possibility, as set forth in Condition 44 and 30 T.A.C. § 116.116(c).

II.
CHANGES IN EPA'S AMBIENT AIR QUALITY STANDARDS DO NOT
AFFECT THE REQUIREMENTS FOR ISSUING PERMITS UNDER REVIEW AT SOAH.

On page 14 of its Exceptions, EDF introduces for the first time in these proceedings a new argument about compliance with new national ambient air quality

²⁷ Tr. at 77:9-78:6, 79:1-10.

²⁸ See EDF Exs. 121-123.

²⁹ *Id.*

³⁰ White Stallion's Offer of Proof on this subject was invited by Judge Keeper on the last day of the hearing after ruling that White Stallion would not be allowed to offer evidence on the insignificance of the differences in the site plans (Tr. at 1329: 15-19). It was submitted on February 22, 2010.

standards very recently announced by EPA. Specifically, EDF cites to a new 1-hour NO₂ NAAQS established by a federal rulemaking that became effective on April 12, 2010,³¹ and a new 1-hour SO₂ NAAQS that *will* be established by a federal rulemaking when it becomes effective on August 23, 2010.³² These new standards are expressed not as simple numeric values, but as post-mathematical processing concentrations monitored using techniques specified in the respective rules.³³

It is unfortunate that this argument was not made in the voluminous briefing that preceded the PFD. By introducing it for the first time at the exceptions stage, EDF has caused White Stallion to burden not only the Judges, but also the Commission, with a written response stating the obvious—that standards not adopted by Texas, and not even promulgated by EPA until after technical review of an application is complete, are not relevant to the Commission’s consideration of whether that application should be granted.

A. The new 1-hour NAAQS for NO₂ and SO₂ are not relevant to the pending application because TCEQ has not incorporated them into Texas’s permitting program.

Texas law requires TCEQ—and every other Texas agency—to follow its own rules until they are changed.³⁴ No sovereign can delegate to another the ability to make

³¹ 75 Fed. Reg. 6474 (February 9, 2010).

³² 75 Fed. Reg. 35520 (June 22, 2010).

³³ The new 1-hour NO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentrations is less than or equal to 100 parts per billion, as determined in accordance with Appendix S to Part 50 of Title 40 of the Code of Federal Regulations. 40 C.F.R. § 50.11(f). The new 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the 99th percentile of the annual distribution of daily maximum 1-hour average concentrations is less than or equal to 75 ppb as determined in accordance with Appendix T to Part 50 of Title 40 of the Code of Federal Regulations. 40 C.F.R. § 50.17(b).

³⁴ See TEXAS WATER CODE § 5.103(c) (“The commission shall follow its own rules as adopted until it changes them in accordance with [the APA.]”); *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 255 (Tex. 1999) and *Public Util. Comm’n v. GulfStates Util. Co.*, 809 S.W.2d 201, 207 (Tex. 1991) (if a Texas

its laws, and so changes in federal ambient air quality standards must be amended by some affirmative act by the state regulatory body to update or ratify those federal law changes before they become effective.³⁵ TCEQ has taken no action to adopt the new standards promulgated by EPA, and so those standards have yet to take legal effect in Texas.

It is not surprising that Texas has not yet adopted the new 1-hour standards; in fact, EPA's rulemaking announcing the new 1-hour SO₂ standard is not even effective yet.³⁶ Even EPA has not yet had a chance to promulgate its own rules to announce requirements for approvable plans to implement the standards, and of course the states have had well short of the minimum time frames required by the federal Clean Air Act for implementing new NAAQS.³⁷ While EPA just last month issued preliminary

agency fails to follow the clear, unambiguous language of its own regulations, its action is arbitrary and capricious.)

³⁵ See, e.g., *Ex parte Elliott*, 973 S.W.2d 737, 740 (Tex. App.—Austin 1998, pet. refused) (if Texas statute incorporating EPA definition of hazardous waste is read to mean that the definition changes from time to time at the will of EPA without intervention by or guidance from the Texas Legislature, then the constitutionality of the statute would be in doubt because it would essentially delegate lawmaking powers to a federal agency). The Commission very recently recognized the power of the Constitutional constraints applied in *Ex Parte Elliott* in the Chairman's recent refusal to accept EPA standard-setting for greenhouse gases as sufficient to make greenhouse gases regulated under the Texas permit program. See August 2, 2010, letter from Chairman Shaw and General Abbott to Administrator Jackson and Regional Administrator Armendariz.

³⁶ It will become an effective rulemaking on August 23, 2010. 75 Fed. Reg. 35520 (June 22, 2010).

³⁷ When a new NAAQS is promulgated, the federal Clean Air Act requires states to submit a list of all areas that should be designated as nonattainment, attainment, or unclassifiable by a date specified by EPA, but no sooner than 120 after, and no later than 1 year after the promulgation of the new NAAQS. 42 U.S.C. § 7407(d)(1) (FCAA § 107(d)(1)). For the new NO₂ standard, EPA has given states until January 2011 to submit designation recommendations. 75 Fed. Reg. 6,520 (Feb. 19, 2010). For the new SO₂ standard, EPA has given states until June 2, 2011, to submit designation recommendations. 75 Fed. Reg. 35569 (June 22, 2010). EPA is required to make designations within 2 years from the date of promulgation of a new NAAQS. 42 U.S.C. § 7407(d)(1)(B)(i) (FCAA § 107(d)(1)(B)(i)). Any state containing an area designated as nonattainment with respect to the new NO₂ or SO₂ NAAQS must submit a SIP revision within 18 months of the effective date of an area's designation of nonattainment. 42 U.S.C. § 7514 (FCAA § 191(a)). If EPA takes the full amount of time allotted to it under the Clean Air Act to make nonattainment designations, states will not be required to submit any required SIP revisions for the new NO₂ or SO₂ NAAQS until June 2013 and December 2013, respectively.

guidance for considering the new 1-hour NO₂ standard in issuing permits,³⁸ of course such guidance applies only to jurisdictions in which EPA issues the permit. And even as to that preliminary guidance, EPA explained that it intended to evaluate the need for changes to the screening tools currently used under the NSR/PSD program for completing NO₂ modeling analyses.³⁹ EPA included similar forward-looking language about the new 1-hour SO₂ standard in the June 22, 2010, preamble to its adoption of that standard, specifically acknowledging the need to develop modeling guidance.⁴⁰ EPA obviously has not yet issued that guidance, as the rule establishing the new 1-hour SO₂ standard will not even be effective until August 23, 2010.⁴¹ And of course such EPA “guidance,” in any event, is not law that governs TCEQ permitting actions.

The new 1-hour NO₂ and SO₂ standards have yet to be adopted by Texas at all, and even permitting programs directly run by EPA lack complete and final guidance for undertaking such analyses. But, as explained next, even if EPA’s new NAAQS were (incorrectly) given self-executing effect as criteria for decision-making with respect to

³⁸ EPA Memorandum from Stephen D. Page to Regional Air Division Directors titled, “Guidance Concerning the Implementation of the 1-hour NO₂ NAAQS for the Prevention of Significant Deterioration Program,” dated June 29, 2010.

³⁹ *See, e.g., Id.* at p. 10 (“EPA intends to conduct an evaluation of these issues [relating to significant impact levels and significant monitoring concentrations] and submit our findings in the form of revised significance levels under notice and comment rulemaking if any revisions are deemed appropriate.”).

⁴⁰ *See* 75 Fed. Reg. 35520, 35579-80 (June 22, 2010) (“The full extent of how a new short-term SO₂ NAAQS will affect the NSR process will need to be carefully evaluated ... We believe it is highly likely that in order to be most useful for implementing the new 1-hour averaging period for NSR purposes, new 1-hour screening values will be appropriate ... Finally, in response to the comment concerning the need for additional guidance as it relates to the use of AERMOD to address PSD issues, EPA anticipates providing additional technical guidance on modeling and analysis as a part of the SIP demonstration process. As stated previously, EPA intends to solicit public comment on guidance regarding modeling, and also solicit public comment on additional implementation planning guidance ... Amendments to the existing PSD requirements set forth in EPA regulations concerning SILs [significant impact levels], SERs [significant emission rates] and SMCs [significant monitoring concentrations] may involve notice and comment rulemaking which could take at least one year to complete.”).

⁴¹ 75 Fed. Reg. 35520 (June 22, 2010).

pending permit applications in Texas, those standards would not apply to White Stallion's application because they were promulgated long after the Executive Director completed technical review of it.

B. Consideration of new permitting requirements ends at the conclusion of technical review.

TCEQ's predecessor agency, the Texas Natural Resource Conservation Commission, previously addressed the question of how to handle new permitting standards issued after the conclusion of technical review, but prior to permit issuance, in issuing a PSD permit to Mirant Parker, LLC (formerly SEI Texas, LLC) on January 7, 2002.⁴² Mirant had applied for a PSD permit authorizing a new combined cycle gas-fired power plant on February 11, 1999.⁴³ At that time, TNRCC's BACT standard for NO_x emissions from combined cycle gas turbines was 9 parts per million.⁴⁴ The Executive Director completed technical review approximately 7 months later, on September 2, 1999, and issued the draft permit a couple of weeks after that, on September 17, 1999.⁴⁵ Later that same month, TNRCC reduced its published BACT standard for NO_x emissions from combined cycle gas turbines from 9 ppm to 5 ppm.⁴⁶

At the subsequent SOAH hearing, the protesting parties argued that Mirant should be held to the lower 5 ppm standard developed by the Agency after issuing the draft

⁴² See TNRCC's January 7, 2002, Order issuing permit numbers 40619 and PSD-Texas-933 to Mirant Parker, LLC; TNRCC Docket No. 2000-0346-AIR; SOAH Docket No. 582-00-1045 (copy provided as Attachment A).

⁴³ *Id.* at Finding of Fact No. 2.

⁴⁴ *Id.* at Finding of Fact No. 2.

⁴⁵ *Id.* at Findings of Fact Nos. 4 & 35.

⁴⁶ *Id.* at Findings of Fact Nos. 17 & 18.

permit.⁴⁷ Among other arguments, they cited an excerpt from EPA's New Source Review Workshop Manual ("The BACT emission limit in a new source permit is not set until the final permit is issued.").⁴⁸ They also cited TEX. HEALTH & SAFETY CODE § 382.0518(a), requiring the Commission to grant a permit if it finds that BACT will be applied and no indication that emissions will contravene the intent of the Texas Clean Air Act "from the information available to the commission, *including information presented at any hearing held under Section 382.056(k).*"⁴⁹ They argued that the italicized phrase meant that the applicable standards were not frozen at the end of technical review, but remained fluid at least until the end of the SOAH hearing.⁵⁰

The Executive Director, applicant and OPIC argued that if the applicable BACT standards constantly changed it could prove impossible for an application review ever to become final.⁵¹ They further argued that determining the BACT level during the technical review stage, and then adhering to that determination, has the benefit of treating similar facilities equally.⁵² In other words, it avoids the problem of holding two contemporaneous applications to different standards simply because one avoids hearing,

⁴⁷ See SOAH's June 26, 2001, PFD (available on SOAH's website at <http://www.soah.state.tx.us/pfdsearch/pfds/582/00/582-00-1045-pfd.pdf>) at p. 7.

⁴⁸ *Id.* at p. 11.

⁴⁹ *Id.* at p. 14-15. Emphasis added to quotation of § 382.0518.

⁵⁰ *Id.* at p. 14-15. In our case, EDF is asking the Commission to apply new NO₂ and SO₂ standards that not only did not exist when technical review was completed, but had still not yet taken effect when the SOAH hearing was held (and in the case of the new SO₂ standard, has *still* not taken effect as of the date of this Response).

⁵¹ *Id.* at p. 7.

⁵² *Id.* at p. 11.

and the other goes to a lengthy hearing during which time the applicable standards change.⁵³

Both SOAH and the Commission agreed that Staff's practice of foreclosing consideration of new standards after issuance of the draft permit was a reasonable one.⁵⁴ In issuing the permit to Mirant with the requirement to meet 9 ppm, the Commission found that "[d]etermining the BACT level early, and adhering to that determination, has the benefit of treating similar facilities equally;" that "[t]he staff's practice of not revisiting BACT is a reasonable one;" and that "[t]he 'information presented at any hearing' language of TEX. HEALTH & SAFETY CODE § 382.0518 refers to whether the facility met the BACT standard in place at the time the draft permit was issued."⁵⁵

The policy applied in the Mirant case remains the Agency's policy today. For example, TCEQ's Executive Director published interim guidance on the new 1-hour NO₂ and SO₂ NAAQS on July 22, 2010, and August 4, 2010, respectively.⁵⁶ In identifying which applicants must demonstrate compliance with the new NAAQS, the guidance states:

Any permit and standard permit/PBR registration under technical review that specifically requires a NAAQS or [NO₂/SO₂] NAAQS compliance demonstration must demonstrate compliance with the 1-hour [NO₂/SO₂] standard.⁵⁷

⁵³ *Id.* at p. 11.

⁵⁴ *Id.* at p. 13; TNRCC's January 7, 2002, Order (Attachment A).

⁵⁵ TNRCC's January 7, 2002, Order (Attachment A), at Finding of Fact No. 28, Finding of Fact No. 32 & Conclusion of Law No. 5.

⁵⁶ "Interim 1-Hour Nitrogen Dioxide (NO₂) NAAQS Implementation Guidance, July 22, 2010" and "August 4, 2010: Interim NAAQS Guidance on Sulfur Dioxide."

⁵⁷ *Id.* at p. 2 of both guidance documents (emphasis added) (footnote explaining which PBRs and standard permits require a demonstration of NAAQS compliance omitted).

Putting aside questions about whether TCEQ can legally require demonstrations of compliance with standards it has not yet adopted, the underlined phrase makes clear that, according to the Executive Director's guidance, only applications "under technical review" as of the date of the guidance (July 22, 2010) for NO₂, or the date the federal rule establishing the new NAAQS becomes effective (August 23, 2010) for SO₂, are required to demonstrate compliance with the new NAAQS. In other words, applications already through technical review as of those dates need not start a new technical review to make the demonstration. Not that it is relevant in this State air permitting proceeding,⁵⁸ but language in EPA's recent rule preambles suggests a similar view.⁵⁹

This very case demonstrates the wisdom of ending consideration of new permitting requirements at the conclusion of technical review. White Stallion filed its air permit application almost two years ago, on September 5, 2008.⁶⁰ Technical review was completed over sixteen months ago, on March 13, 2009, when the Executive Director

⁵⁸ See White Stallion's Response to Exceptions at pp. 1-2, explaining that, to borrow the words of Judges Newchurch and Wilfong, arguments of federal law supremacy in the context of PSD permitting in Texas "lack important nuance and are overly broad and incorrect" (citing SOAH's February 8, 2010, proposal for decision in the case styled *Application of IPA Coletto Creek, LLC for State Air Quality Permit 83778 and Prevention of Significant Deterioration Air Quality Permit PSD-TX-1118 and for Hazardous Air Pollutant Major Source [FCAA § 112(g)] Permit HAP-18, SOAH Docket No. 582-09-2045, TCEQ Docket No. 2009-0032-AIR*, at p. 9).

⁵⁹ Despite the anticipation of additional rulemaking to establish procedures for demonstrating compliance with the new 1-hour standards, both preambles state that "major new and modified sources applying for NSR/PSD permits will initially be required to demonstrate that their proposed emissions increases" will not cause or contribute to violations of the new 1-hour standards. 75 Fed. Reg. 6474, 6525 (February 9, 2010), 75 Fed. Reg. 35520, 35579 (June 22, 2010). Putting aside the obvious questions about how EPA expects these demonstrations to be made before the proper procedures for making them are established, note EPA's choice of words: "new ... sources applying for ... permits." That would exclude White Stallion, which has already *applied for* (past tense) a permit.

⁶⁰ White Stallion Vol. 1, Ex. 102 (White Stallion's Application, dated September 5, 2008).

issued the Draft Permit.⁶¹ That was preceded by written comments, a public meeting, and the Executive Director's Response to Comments. White Stallion's application then was the subject of a full-blown contested case hearing at SOAH, followed by voluminous briefing, and issuance of a PFD. Now, after all that, and even after the administrative record has been closed for months,⁶² EDF tells us for the first time that there are two new requirements to consider.

If there's one thing constant about air permitting law, it is that it changes. There will always be new requirements. The fact that the new SO₂ standard is still not effective, but could become effective prior to Agenda, with no guarantee that yet additional air permitting requirements will not come into effect after that, affirms the wisdom of cutting off consideration of new requirements at the conclusion of technical review. Given that the delay between the end of technical review and permit issuance can be a matter of years (White Stallion is at 16+ months and counting), any other policy would draw permit applications into never-ending loops of review from which there is no escape.

Finally, while it is by no means determinative of any issue before the Commission, there is one last point to be made on the subject of the new 1-hour standards. EDF likely would characterize this permitting proceeding as the Commission's one and only chance to impose any necessary restrictions on NO₂ and SO₂ emissions from the WSEC. It is not. The Commission has the power to regulate emissions from all sources in Texas, including the WSEC, as needed to achieve and

⁶¹ White Stallion Vol. 3, Ex. 111 (Technical Completeness Determination for the Application, dated March 13, 2009).

⁶² The record closed on May 5, 2010. See PFD at p. 3.

maintain NAAQS compliance through the SIP process.⁶³ Of course, it is extremely unlikely that it will ever have to impose any such restrictions on the WSEC, as not even EDF argues that the WSEC's emissions will cause or contribute to exceedances of the new standards. Indeed, the only record evidence on the subject, specific to the new NO₂ standard, is that they will not.⁶⁴ But, to the extent the Commission ever credibly determines it necessary to regulate sources like the WSEC to achieve or maintain compliance with the new short-term standards, it will be able (indeed required) to do so.

III.

THE JUDGES MADE THE RIGHT ALLOCATION OF TRANSCRIPT COSTS.

The Judges have ordered that the transcript costs be allocated equally among the three non-governmental parties, such that White Stallion, EDF and Sierra Club are each responsible for \$2,509.91.⁶⁵ This is the right allocation, for reasons explained in the PFD. In their Exceptions, both EDF and Sierra Club complain about having to pay this amount, with EDF asserting (without any citation) that it is “a matter of public knowledge that the Applicant has greater financial ability to pay than the non-profit Protestants.”⁶⁶

While EDF and Sierra Club work to portray themselves to the Commission as Davids fighting Goliaths on behalf of local landowners, the truth is that these national

⁶³ See TEX. HEALTH & SAFETY CODE § 382.011, General Powers and Duties.

⁶⁴ While it was certainly not necessary given the Commission's policy of ending consideration of new requirements at the end of technical review, to maximize the Commission's confidence in the PFD, White Stallion offered evidence that its emissions would not cause or contribute to exceedances of the new 1-hour NO₂ standard, which was published in the Federal Register on February 9, 2009, the day before the hearing started. The PFD, at Findings of Fact Nos. 76-80, concludes, based on that evidence, that the standard will not be exceeded.

⁶⁵ PFD at Findings of Fact Nos. 395-396.

⁶⁶ EDF's Exceptions at p. 25.

organizations have access to very substantial private foundation resources, which they are using in active campaigns aimed at stopping the development of solid fuel-fired power plants around the country. For example, evidence in this record shows that Sierra Club is engaged in a nationwide campaign called “Stopping the Coal Rush.”⁶⁷ Its paid control technology expert in the case, Bill Powers, has in the past few years testified on behalf of Sierra Club in at least 14 power plant permitting hearings in at least 12 different states.⁶⁸ And not long before the SOAH hearing, both Mr. Powers and EDF’s control technology expert, Dr. Ranajit Sahu, had come from California to Austin to attend an annual meeting of lawyers and experts hired by Sierra Club and other national environmental groups, the purpose of which was to discuss strategies on how to defeat power plant projects.⁶⁹ Their pleas of relative poverty ring as true as the “My Lear Jet Needs Gas” signs displayed by local panhandlers.

IV. **CONCLUSION**

Nothing in the protesting parties’ Exceptions warrants any changes to SOAH’s PFD. White Stallion respectfully requests that the Commission adopt SOAH’s proposed Findings of Fact and Conclusions of Law as revised in Attachment A of White Stallion’s Exceptions, and that its application for an air permit be granted.

⁶⁷ See White Stallion Ex. 707.

⁶⁸ Tr. at 817:6-824:9 (Powers on cross).

⁶⁹ Tr. at 806:9-815:15 (Powers on cross).

Respectfully submitted,

By: _____

Eric Groten

State Bar No. 08548360

Patrick Lee

State Bar No. 24041322

VINSON & ELKINS L.L.P.

2801 Via Fortuna, Ste. 100

Austin, Texas 78746

Tel: 512.542.8400

Fax: 512.236.3272

Attorneys for White Stallion Energy Center,
LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following via hand delivery, facsimile, electronic mail, first class mail, and/or overnight mail on this the 6th day of August, 2010.

Via Hand-Delivery

Honorable Judge Keeper
Honorable Judge Qualtrough
State Office of Administrative Hearings
ATTN: SOAH Docket Clerk
P.O. Box 13025
Austin, TX 78711-3025
300 West 15th Street
Austin, TX 78701
Tel: 512.475.4993
Facsimile: 512.475.4994

Via Electronic Mail

Booker Harrison (booharri@tceq.state.tx.us)
Benjamin Rhem (BRhem@tceq.state.tx.us)
TCEQ, MC-175
P.O. Box 13087
Austin, TX 78711-3087
12100 Park 35 Circle, Bldg. F
Austin, TX 78753
PH: (512) 239-4113 (Harrison)
PH: (512) 239-6501 (Rhem)
FAX: (512) 239-0606

Via Electronic Mail

Christina Mann (cmann@environmentalintegrity.org)
Environmental Integrity Project
1303 San Antonio Street
Suite 200
Austin, TX 78701
PH: (512) 637-9477
FAX: (512) 584-8019

Original Via Hand-Delivery + 7 copies

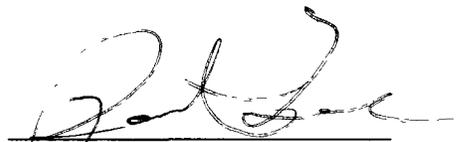
Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512.239.3300
Facsimile: 512.239.3311

Via Electronic Mail

Scott Humphrey (shumphre@tceq.state.tx.us)
Office of the Public Interest Counsel
TCEQ, MC-103
P.O. Box 13087
Austin, TX 78711-3087
12100 Park 35 Circle, Bldg. F
Austin, TX 78753
PH: (512) 239-6363
FAX: (512) 239-6377

Via Electronic Mail

Paul Tough (ptough@msmtx.com)
Greg Friend (gfriend@msmtx.com)
Tom Weber (tweber@msmtx.com)
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, TX 78711
PH: (512) 327-8111
FAX: (512) 327-6566



Patrick Lee

ATTACHMENT A

TNRCC's January 7, 2002, Order issuing permit numbers 40619 and PSD-Texas-933 to Mirant Parker, LLC; TNRCC Docket No. 2000-0346-AIR; SOAH Docket No. 582-00-1045

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AN ORDER issuing permit numbers 40619 and PSD-Texas-933 to Mirant Parker, LLC; TNRCC Docket No. 2000-0346-AIR; SOAH Docket No. 582-00-1045

On DEC 19 2001, the Texas Natural Resource Conservation Commission (the Commission or the TNRCC) considered the application of Mirant Parker, LLC (formerly SEI Texas, LLC) for air quality Permit Numbers 40619 and PSD-Texas-933 for a natural-gas-fired generation facility in Parker County, Texas. The application was presented to the Commission with a Proposal for Decision by Henry D. Card, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Texas Natural Resource Conservation Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Applicant Mirant Parker, LLC (formerly SEI Texas, LLC) is a limited liability company formed in the state of Delaware and qualified to do business in Texas. Mirant Parker is an indirect wholly-owned subsidiary of Mirant Corporation (formerly know as Southern Energy, Inc.).
2. The application for this facility was filed February 11, 1999.
3. The Executive Director found the application to be administratively complete before September 1, 1999.

4. The Executive Director issued the draft permit for the facility on September 17, 1999.
5. The facility in question would be constructed on the northern side of Lake Weatherford, near the City of Weatherford, in Parker County.
6. The construction and operation of the facility would be in three phases. The first phase would involve the installation of two dual-shaft General Electric (GE) PG7241 (FA) natural-gas-fired electric generating turbines each rated at 170 MW. Those turbines would be operated in simple cycle (*i.e.* no heat recovery) until the third phase. The second phase would involve the installation of two GE PG7121 (EA) natural-gas-fired turbines, each rated at 82 MW. Those turbines would remain simple cycle turbines. The third phase would involve the installation of heat recovery steam generators (HRSGs) for each of the turbines installed in the first phase and one steam turbine capable of generating approximately 160 MW of electricity.
7. The Applicant published notice of the application on February 3 and 4, 2000, in *The Weatherford Democrat*, a newspaper of general circulation in Weatherford, Parker County, Texas. The notice contained the information set out in the Commission's rules at 30 TEX. ADMIN. CODE (TAC) §116.132.
8. The Applicant posted signs at the site of the proposed facility, declaring the filing of the application for an air quality permit. The signs were of the dimensions and print size, and contained the information set out in, the Commission's rules at 30 TAC §116.133.
9. The Applicant published notice of the hearing in *The Weatherford Democrat* on April 14, 2000.
10. A preliminary hearing was held in this matter May 16, 2000. At that preliminary hearing, the ALJ accepted jurisdiction, ruled that notice had been completed in accordance with the

relevant statutes and rules, heard public comment, and designated the parties.

11. The evidentiary hearing in this matter was held from January 29, 2001, through January 31, 2001, in Austin, Texas, and on February 2, 2001, in Weatherford, Texas. The hearing was reconvened on February 23, 2001, in Austin, Texas, to hear the testimony of two witnesses who had been unavailable and to allow rebuttal testimony from the Applicant.
12. The parties filed their written closing arguments April 9 and responsive arguments April 30, 2001. On May 1, 2001, the Aligned Protestants filed a motion to reopen the record for admission of a resolution that had been passed by the Parker County Commissioners' Court on April 23, 2001. The ALJ granted the motion and admitted that resolution and an earlier Parker County resolution into evidence on May 17, 2001.
13. The proposed facility is expected to emit the following regulated air contaminants: nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), particulate matter (PM), particulate matter with aerodynamic diameter of 10 microns or less (PM₁₀), volatile organic compounds (VOC); hazardous air pollutants (HAP), and sulfuric acid (H₂SO₄).
14. Maximum emissions from the sources at the proposed facility in pounds per hour (lbs/hr) and in tons per year (TPY) based on 8,760 hours of operation per year will be as follows:

		<u>lbs/hr</u>	<u>TPY</u>
GE Model 7241 FA Gas Turbine (S-1):	NO _x	63.0	254.1
	CO	31.0	122.7
	SO ₂	10.5	5.0
	VOC	3.0	12.3
	PM/PM ₁₀	18.0	78.9
	H ₂ SO ₄	0.8	0.4

GE Model 7241 FA Gas Turbine (S-2):	NOx	63.0	254.1
	CO	31.0	122.7
	SO ₂	10.5	5.0
	VOC	3.0	12.3
	PM/PM ₁₀	18.0	78.9
	H ₂ SO ₄	0.8	0.4
GE Model 7121 EA Gas Turbine (S-3):	NOx	35.0	140.2
	CO	58.0	232.2
	SO ₂	6.0	2.9
	VOC	2.0	7.9
	PM/PM ₁₀	14.0	61.3
	H ₂ SO ₄	0.5	0.3
GE Model 7121 EA Gas Turbine (S-3):	NOx	35.0	140.2
	CO	58.0	232.2
	SO ₂	6.0	2.9
	VOC	2.0	7.9
	PM/PM ₁₀	14.0	61.3
	H ₂ SO ₄	0.5	0.3
Piping Fugitives (EPN-5)	VOC	0.44	1.99
Cooling Tower (C-1)	PM/PM ₁₀	1.45	6.36

15. In February of 1999, when the permit application was filed, the Commission's Best Available Control Technology (BACT) standard for NOx was 9 parts per million (ppm).

16. For the simple cycle turbines to be installed and operated in phases 1 and 2, the Commission's BACT standard remains at the 9 ppm level.
17. For a gas turbine operating in combined cycle, which is proposed for phase 3, the Commission's BACT standard for NOx was reduced to 5 ppm sometime in September 1999.
18. The reduction in BACT for a gas turbine operating in combined cycle occurred after the draft permit for this facility had been issued.
19. BACT review is a three-tier process. In Tier 1, which was applied in this case, controls accepted as BACT in a recent permit review for the same process/industry are approvable as BACT in a current review if no new technical developments have been made which indicate that additional controls are economically or technically reasonable.
20. The Commission's staff's practice is to make the BACT determination early in the application process.
21. The Commission's staff consistently used a BACT of 9 ppm for permits, such as this one, in which the application was made before September 1999, but the permit issued after September 1999. The exceptions to that practice were units for which the applicant had voluntarily accepted a reduction to 5 ppm or which were located in non-attainment areas.
22. The Commission's staff has consistently followed a practice of not revisiting BACT after the initial determination has been made.
23. The Commission has decided no contested cases on the subject of whether BACT should be revisited after the initial determination.

24. The Commission has not issued any publications discussing whether BACT should be revisited after the initial determination.
25. BACT determines the technology that will be used, which in turn determines the rest of the review. If BACT were always changing, it would be difficult to complete a review of an application. That situation would be costly not only to the applicants, but to the Commission's staff, which would have to re-review applications.
26. The Applicant has proposed the use of dry low NOx burners to achieve the 9 ppm level.
27. To achieve the 5 ppm level, the Applicant would more than likely need to use a Selective Catalytic Reduction (SCR) process. Although that is an accepted process, its imposition would involve different costs, emissions, and modeling.
28. Determining the BACT level early, and adhering to that determination, has the benefit of treating similar facilities equally.
29. For this facility, modeling was performed in February 1999, using the original application parameters; in August 1999 and May 2000, using different stack height, stack diameters, emissions exit velocities, and other different parameters; and again in June 2000.
30. BACT must be determined before the application's modeling and other representations can be finally reviewed.
31. Although the Applicant performed additional modeling after the draft permit had been issued, that re-modeling was not so extensive that it required the staff to go back and reevaluate the project.
32. The staff's practice of not revisiting BACT is a reasonable one.

33. Tying BACT to the standard in place on the application date is a reasonable practice.
34. Another reasonable cut-off date for determining BACT would be the date on which an application is declared technically complete. That approach would have the benefit of encouraging applicants to respond and cooperate promptly during the staff's review.
35. The BACT standard was changed after the date this application was declared technically complete (September 2, 1999) and after the date on which the draft permit was issued (September 17, 1999).
36. It is reasonable for the BACT standard of 9 ppm to be applied to this proposed facility.
37. The facility meets the BACT standard of 9 ppm for combined cycle facilities, in place at the time of the application.
38. The facility also meets BACT for all contaminants other than NOx.
39. The usual time period between receipt of an application and authorization to publish notice ranges from 3 to 9 1/4 months, with an average of approximately 5 1/3 months.
40. The period for processing this application was 7 1/4 months.
41. The period for processing this application was not unreasonably long.
42. The Applicant was responsive to the staff's requests for information.
43. Any incorrect public statements by the Applicant did not delude the citizens of Parker County into supporting the project, as can be seen by the size and continuing interest of the Protestant group.

44. The Commission's staff's health effects review considers both "criteria" and "non-criteria" pollutants.
45. "Criteria" pollutants are those for which the EPA has set specific National Ambient Air Quality Standards (NAAQS) or the state has set specific air quality standards.
46. NAAQS have been set for six common air contaminants: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM₁₀), and sulfur dioxide (SO₂).
47. The state has set specific air quality standards for sulfur dioxide, total suspended particulates (TSP), and sulfuric acid (H₂SO₄).
48. As directed by the Commission, the Applicant performed atmospheric dispersion modeling to predict worst-case off-property ground-level concentrations (GLC) of all air contaminants of concern:
 - a. The Applicant conducted full computer air-dispersion modeling with the Industrial Source Complex Short Term model, version 3, number 99155 (ISCST3), as approved by EPA and the Commission. The ISCST3 model can predict air contaminant GLCs with an acceptable degree of accuracy.
 - b. The modeling performed by the Applicant was reviewed by the Commission and deemed acceptable and in compliance with the Commission's modeling guidelines.
 - c. The meteorological data were purchased from Bee-Line Software in a format for use in the ISCST3 model. In compliance with the TNRCC guideline for emission sources located in Parker County, the surface meteorological data were collected from the National Weather Service (NWS) station at the Dallas-Fort Worth Airport (Station Number 03927), and the upper air meteorological data were from the NWS station at Stephenville, Texas (Station Number 13901).

- d. The modeling included the appropriate parameters to consider the character of the surrounding area and downwash.
49. For the criteria pollutants, the predicted concentrations were compared to the maximum levels set by the Federal or state standards. For the non-criteria pollutants, the concentrations were compared to the Effects Screening Levels (ESLs) established by the TNRCC staff.
50. A review of additive or synergistic effects was not necessary because the maximum concentrations that are predicted are very, very low and ESLs are set so conservatively.
51. No adverse health effects would result from additive or synergistic effects accompanying the emissions from the proposed facility.
52. An ESL is a substance-specific guideline comparison value that the Commission's Toxicology and Risk Assessment (TARA) staff uses to review non-criteria substances.
53. TARA publishes a list of ESLs; the list contains short- and long-term ESLs for all the listed substances.
54. ESLs are set to prevent the occurrence of acute and chronic health effects in the general population, including sensitive subpopulations, and of nuisance effects, *e.g.* nuisance odors. They are also set to prevent welfare effects, such as vegetative damage and excess corrosion, where necessary.
55. Adverse effects are not expected when the air concentration of a substance is below the ESL.
56. To calculate the ESLs, the TARA staff considers peer-reviewed scientific literature, occupational exposure, epidemiological and experimental (animal) data, and information from other regulatory agencies. The staff identifies a level of a substance at which no

adverse effects have been observed or derives it from the available toxicological information. That level is divided by safety factors of ten to account for various considerations, such as the differences between animals and people, the need to protect sensitive individuals, or differences in exposure time.

57. The ESLs are set well below the concentrations reported to cause adverse health effects to any of the organisms studied, whether human or animal.
58. The concentrations for all the non-criteria contaminants the proposed facility is expected to produce were below the ESLs.
59. No adverse health or welfare effects are expected to occur as a result of the plant's emissions of the non-criteria contaminants.
60. The Applicant's estimate of the amount of formaldehyde to be emitted by the facility changed several times during the permitting and hearing process. In its February 1999 application, SEI/Mirant originally estimated formaldehyde emissions of approximately 79 tons per year. The estimate was revised in August 1999 to approximately 13 tons per year. The Applicant's final estimate was 9.5 tons per year.
61. SEI/Mirant's original formaldehyde figure was derived from the EPA document entitled "AP-42, Compilation of Air Pollution Emissions Factors, Volume I, Stationary Point and Area Sources. "
62. Between February of 1999 and August of 1999, SEI received information from General Electric, the turbine manufacturer, regarding emissions from GE turbines that reduced the factor to the 13 tons per year level. The gist of GE's explanation was that one of the points in the original data base was far above the mean and had skewed the calculation.

63. The preponderance of the evidence shows that estimated formaldehyde emissions from the facility will be either 36 ppb or 41 ppb. In either case, the estimated emissions are below the 10 tons per year level.
64. The facility is not expected to emit any Hazardous Air Pollutants in excess of 10 tons per year.
65. The following language should be added to the draft permit to require monitoring of formaldehyde and other hazardous air pollutants:

Air emissions from each gas turbine shall be tested while firing at full load for the ambient conditions at the time of testing. Air contaminants to be sampled and analyzed while at full load include (but are not limited to) NO_x, O₂, CO, NH₃, VOC, formaldehyde, SO₂, PM₁₀, and opacity. (Fuel sampling using the methods and procedures of 40 CFR 60.335[d] may be conducted in lieu of stack sampling for SO₂).

66. At the time of the filing of the application, the Applicant did not have any operations in Texas. A review of the representations from the Applicant for its operations outside Texas did not reveal any ongoing material violations of environmental regulations.
67. The permit attached to this Order and the general and special conditions within them, as prepared by the Commission's Executive Director, plus the additional condition requiring monitoring for Hazardous Air Pollutants, represent necessary and appropriate requirements to be placed on the holder of the permit to: (1) ensure operation of the facility as represented in the application and compliance with the applicable statutes and with all the applicable rules and regulations of the Commission; and (2) impose enforceable emissions limits for the facility that will be protective of the public health and welfare. The permit, with the additional condition, is sufficient to authorize construction of the Applicant's proposed power generation facility.

68. The Applicant is in good standing with the offices of the Texas Secretary of State and the Texas Comptroller of Public Accounts and is not delinquent in the payment of state franchise taxes.
69. The transcript cost was \$5063.29.
70. The Applicant is able to pay the full reporting and transcript costs.
71. Of the five lay witnesses, who were part of the Protestant group, one, Mr. Helm, is an attorney, and another, Larry Mason, is a manager for Computer Sciences Corporation. Another, Bruce Crow, is a retired heavy equipment operator. None of the lay witnesses was asked about his financial status, nor was testimony presented about other Protestants' ability to pay the transcript costs.
72. The evidence does not establish the Protestants' ability to pay the transcript costs.
73. Both the Applicant and the Protestants participated fully in the hearing and benefitted from having a transcript.
74. When one side presents most of the prefiled testimony in a case, it is almost inevitable that the opposing party will ask most of the questions. In this case, the Applicant presented six prefiled direct witnesses, the Executive Director presented three, and the Protestants presented one. The Protestants' cross-examination would not have occurred without the existence of the prefiled testimony itself.
75. The Protestants' questions were not particularly unfocused or inappropriate for the hearing setting.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. WATER CODE ANN. ch. 5 and TEX. HEALTH & SAFETY CODE ANN. ch. 382.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § ch. 2003.
3. Proper notice of this matter was given as required by TEX. HEALTH & SAFETY CODE ANN. §382.031, TEX. GOV'T CODE ANN. §2001.052, and 30 TAC Chapter 116.
4. The Commission has not adopted a "policy" regarding whether BACT should be revisited after the initial determination, within the meaning of TEX. GOV'T CODE ANN. §2001.058(e)(1)(A).
5. The "information presented at any hearing" language of TEX. HEALTH & SAFETY CODE §382.0518 refers to whether the facility met the BACT standard in place at the time the draft permit was issued.
6. The staff's practice of not revisiting the BACT after the initial determination has been made does not violate TEX. HEALTH & SAFETY CODE §382.0518.
7. Generally, facilities must meet the BACT requirement set out in 30 TAC §116.111(a)(2)(C).
8. Parker County is not an Environmental Protection Agency (EPA) designated non-attainment area for any air contaminant pursuant to section 107 of the Federal Clean Air Act (42 U.S.C. §7407).

9. Facilities in non-attainment areas must meet the Lowest Achievable Emission Rate (LAER) for NOx, as set out in 30 TAC §116.150.
10. The rules do not allow the Commission to apply LAER to attainment or unclassified areas for equitable reasons.
11. The proposed facility meets the BACT requirements set forth in TEX. HEALTH & SAFETY CODE §382.0518(b)(2) and 30 TEX. ADMIN. CODE (TAC) §116.111(a)(2)(C).
12. It is agency policy not to review start-up and shut-down emissions in permit applications. Instead those emissions are regulated through 30 TAC §101.7 and the enforcement process.
13. Because the Protestants did not object to the evidence regarding ESLs, the standards set out by the Texas Supreme Court in *E. I. du Pont de Nemours and Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995) and *Merrill Dow Pharmaceutical v. Havner*, 953 S.W. 2d 706 (Tex. 1997) should not be applied to that evidence in this case.
14. The Commission and SOAH ALJs have upheld the reliability of the ESLs. See the Commission's Order in *Matter of the Application of TXI Operations, L.P. for Permit No. HW-50316-001*, SOAH Docket No. 582-97-0499, TNRCC Docket No. 96-1466-IHW (March 19, 1999) and ALJ's Order No. 10, issued January 18, 2000, in *Application of North Texas Cement Company for Issuance of a Proposed Air Quality Permit Nos. 37177 and PSD-TX-893 in Grayson County, Texas*, SOAH Docket No. 582-99-0424, TNRCC Docket No 98-1477-AIR.
15. The Commission's endorsement in *TXI* of the staff's use of ESLs established an agency policy that the ALJ must consider under TEX. GOV'T CODE ANN.§2001.058. The evidentiary record in this case does not warrant any change in that policy.

16. The proposed facility would not adversely affect the public's health and property, as required by the TEX. HEALTH & SAFETY CODE §382.0518(b)(2) and 30 TAC §116.111(A).
17. Section 112(g) of the federal Clean Air Act requires a Maximum Achievable Control Technology (MACT) analysis for certain facilities that emit over ten tons per year of any hazardous air pollutant (HAP).
18. Formaldehyde is a pollutant subject to Section 112(g) of the federal Clean Air Act.
19. Effective June 26, 2000, a case-by-case MACT may be required for a natural gas turbine that emits ten tons per year of any HAP or 25 tons of combined HAPs.
20. A MACT analysis would be required if the preponderance of the evidence showed the facility would emit more than 10 tons per year of formaldehyde.
21. The estimated formaldehyde emissions from the proposed facility are below the level that would trigger a maximum available control technology (MACT) review under 30 TAC §116.111(a)(2)(K) as well as the federal Clean Air Act §112(g) and 40 Code of Federal Regulations (CFR) Part 63.
22. The Applicant must meet the following statutes, rules, and regulations for the permit to be granted:

State Statute

Texas Health & Safety Code, Subchapter C: §§382.051 - 382.0518, 382.052, 382.055, and 382.056

State Rules

TAC Title 30:

Chapter 101: §101.4

Chapter 111: §§111.111(a)(1) and (a)(7) and 111.115

Chapter 112: §§112.1 - 112.21 and 112.41 - 112.47

Chapter 116: §§116.10 - 116.183

Chapter 117: §§117.10 - 117.283 and 117.510 - 117.750

Federal Statutes

42 U.S.C §7401 *et seq.* (Federal Clean Air Act):

Part A: §§7409, 7410, and 7411 (NAAQS, SIPs for NAAQS and Standards for Performance for New Stationary Sources)

Part C: §§7470 -7492 (PSD)

Part D: §§7501 - 7515 (NA areas in general)

Federal Regulations

40 CFR 50.1 - 50.12 (NAAQS)

40 CFR 52.21 (PSD)

40 CFR 60.1 - 60.19 (Standards for Performance for New Stationary Sources)

40 CFR 60.330 - 60.335 (Standards of Performance for Stationary Gas Turbines)

40 CFR Chapter 63, National Emission Standards for Hazardous Air Pollutants (MACT).

23. The application complies with the statutes, rules, and regulations set forth in the Conclusion of Law above.
24. The Commission should issue the draft permit, with the additional condition requiring monitoring of Hazardous Air Pollutants.
25. Pursuant to 30 TAC §80.23(d), all reporting and transcript costs should be allocated to the Applicant.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION THAT:

1. The application by Mirant Parker, LLC (formerly SEI Texas, LLC) for Permit Numbers permit numbers 40619 and PSD-Texas-933 is approved in accordance with the terms and conditions contained in the attached permit, with the following additional condition:

Air emissions from each gas turbine shall be tested while firing at full load for the ambient conditions at the time of testing. Air contaminants to be sampled and analyzed while at full load include (but are not limited to) NO_x, O₂, CO, NH₃, VOC, formaldehyde, SO₂, PM₁₀, and opacity. (Fuel sampling using the methods and procedures of 40 CFR 60.335[d] may be conducted in lieu of stack sampling for SO₂).

2. The Applicant shall be responsible for the payment of all transcription and recording costs incurred in connection with this application.
3. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief not expressly granted herein, are hereby DENIED for want of merit.
4. The Chief Clerk of the Texas Natural Resource Conservation Commission forward a copy of this Order and the attached permit, with the additional condition, to all parties and, subject to the filing of motions for rehearing, issue the revised permit.
5. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

6. The effective date of this order is the date the order is final, as provided by 30 TEX. ADMIN. CODE §80.273 and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §2001.144.

Issue Date: JAN 07 2002.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



For the Commission

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AIR QUALITY PERMIT



A PERMIT IS HEREBY ISSUED TO

SEI Texas, LLC

AUTHORIZING THE CONSTRUCTION AND OPERATION OF THE
Weatherford Electric Generation Facility

LOCATED AT

Weatherford, Parker County, Texas

LATITUDE 32° 48' 23" LONGITUDE 097° 41' 57"



1. Facilities covered by this permit shall be constructed and operated as specified in the application for the permit. All representations regarding construction plans and operation procedures contained in the permit application shall be conditions upon which the permit is issued. Variations from these representations shall be unlawful unless the permit holder first makes application to the Texas Natural Resource Conservation Commission (TNRCC) Executive Director to amend this permit in that regard and such amendment is approved. [Title 30 Texas Administrative Code § 116.116 (30 TAC § 116.116)]
2. **Voiding of Permit.** A permit or permit amendment is automatically void if the holder fails to begin construction within 18 months of date of issuance, discontinues construction for more than 18 consecutive months prior to completion, or fails to complete construction within a reasonable time. Upon request, the Executive Director may grant a onetime 18-month extension of the date to begin construction. [30 TAC § 116.115(b)(2)(A)]
3. **Construction Progress.** Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate Regional Office of the TNRCC not later than 15 working days after occurrence of the event. [30 TAC § 116.115(b)(2)(B)]
4. **Start-up Notification.** The appropriate TNRCC Air Program Regional Office shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the TNRCC may be present. Phased construction, which may involve a series of units commencing operations at different times, shall provide separate notification for the commencement of operations for each unit. Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the TNRCC Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with 30 TAC Chapter 101, Subchapter H, Division (relating to Mass Emissions Cap and Trade Program). [30 TAC § 116.115(b)(2)(c)]
5. **Sampling Requirements.** If sampling of stacks or process vents is required, the permit holder shall contact the TNRCC Office of Air Quality prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the TNRCC Executive Director and coordinated with the regional representatives of the Commission. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant. [30 TAC § 116.115(b)(2)(D)]
6. **Equivalency of Methods.** It shall be the responsibility of the permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the TNRCC Executive Director prior to their use in fulfilling any requirements of the permit. [30 TAC 116.115(b)(2)(E)]
7. **Recordkeeping.** A copy of the permit along with information and data sufficient to demonstrate compliance with the permit are to be maintained in a file at the plant site and made available at the request of personnel from the TNRCC or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information is to be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information shall include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained. [30 TAC § 116.115(b)(2)(F)]
8. **Maximum allowable emission rates.** The total emissions of air contaminants from any of the sources of emissions listed in the table entitled "Emission Sources - Maximum Allowable Emission Rates" must not exceed the values stated on the table attached to the permit. [30 TAC § 116.115(b)(2)(G)]
9. **Maintenance of Emission Control.** The facilities covered by the permit are not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with 30 TAC §§101.6 and 101.7 of this title (relating to Notification Requirements for Major Upset and Notification Requirements for Maintenance). [30 TAC § 116.115(b)(2)(H)]
10. **Compliance with Rules.** Acceptance of a permit by a permit applicant constitutes an acknowledgement and agreement that the holder will comply with all rules, regulations, and orders of the TNRCC issued in conformity with the Texas Clean Air Act (TCAA) and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of Commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit. [30 TAC § 116.115(b)(2)(I)]
11. This permit may be appealed pursuant to 30 TAC § 50.39.
12. This permit may not be transferred, assigned, or conveyed by the holder except as provided by rule. [30 TAC § 116.110(d)]
13. There may be additional special conditions attached to a permit upon issuance or modification of the permit. Such conditions in a permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code. [30 TAC § 116.115(c)]
14. Emissions from this facility must not cause or contribute to a condition of "air pollution" as defined in TCAA § 382.003(3) or violate TCAA § 382.085. If the TNRCC Executive Director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.

PERMIT 40619 and PSD-TX-933

DATE _____

For the Commission
Texas Natural Resource Conservation Commission

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

EMISSION LIMITATIONS AND OPERATING SPECIFICATIONS

1. The gas turbines shall be limited to firing pipeline-quality, sweet natural gas containing no more than 2.0 grains total sulfur per 100 dry standard cubic feet. Firing of any other fuel will require authorization from the permitting authority.
2. The turbines shall normally operate at 100 percent base load except for periods of start-up or shutdown not to exceed three hours. Reduced load operation is authorized to accommodate periods of reduced power demands provided the maximum pounds per hour and ton per year emission rates specified in the attached table entitled "Emission Sources - Maximum Allowable Emissions Rates" are not exceeded.
3. Each GE Model 7241 FA turbine shall be limited to a maximum firing rate of no more than 1,910 million Btu per hour fuel higher heating value. Each GE Model 7121 EA turbine shall be limited to a maximum firing rate of no more than 1,079 million Btu per hour fuel higher heating value.
4. Upon request by the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) or any local air pollution control program having jurisdiction, the holder of this permit shall provide a sample and/or an analysis of the fuel fired in this facility or shall allow air pollution control agency representatives to obtain a sample for analysis.
5. Opacity of emissions shall not exceed 5 percent averaged over a six-minute period from each emission point identified in the maximum allowable emission rates table (MAERT), except for periods of start-up, shutdown, or maintenance not to exceed three hours. The opacity shall be determined by Environmental Protection Agency (EPA) Reference Method No. 9.
6. Construction of Phase II, which involves the installation of two GE Model 7121 EA gas-fired turbines shall begin 18 months after the issuance of the permit. Construction of Phase III, which involves the installation of two unfired heat recovery steam generator, one steam turbine, and a cooling tower, shall begin 36 months after the issuance of the permit. Construction for either of the above phases may begin before the above timeframes; however, failure to begin construction within 18 months of the above timeframes for either phases shall automatically void authorization to construct that phase. Upon request, the TNRCC Executive Director may grant a one-time extension of the date to begin construction of the above phases.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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FEDERAL APPLICABILITY

7. These facilities shall comply with applicable requirements of the EPA Regulations on Standards of Performance for New Stationary Sources, Title 40 Code of Federal Regulations Part 60 (40 CFR 60), promulgated for:
 - A. General Conditions, Subpart A.
 - B. The gas turbines are subject to the applicable requirements of Subpart GG, Standards of Performance for Stationary Gas Turbines.

If any condition of this permit is more stringent than the regulations so incorporated, then for the purposes of complying with this permit, the permit shall govern and be the standard by which compliance shall be demonstrated.

INITIAL DETERMINATION OF COMPLIANCE

8. Sampling ports and platforms shall be incorporated into the design of each exhaust stack according to the specifications set forth in the attachment entitled "Chapter 2, Stack Sampling Facilities." Alternate sampling facility designs may be submitted for approval by the TNRCC Regional Director or the Manager of the TNRCC Enforcement Division, Air Section, Engineering Services Team in Austin.
9. The holder of this permit shall perform stack sampling and other testing as required to establish the actual quantities of air contaminants being emitted into the atmosphere from Emission Points Nos. TS-1, TS-2, S-3, and S-4. Sampling shall be conducted in accordance with the appropriate procedures of the TNRCC Sampling Procedures Manual and in accordance with the appropriate EPA Reference Methods 201A and 202 or Reference Method 5, modified to include back-half condensibles, for the concentration of particulate matter equal to or less than 10 microns in diameter (PM_{10}); Reference Method 8 or Reference Methods 6 or 6c for sulfur dioxide (SO_2); Reference Method 9 for opacity (consisting of 30 six-minute readings as provided in 40 CFR 60.11[b]); Reference Method 10 for the concentration of carbon monoxide (CO); Reference Method 25A, modified to exclude methane and ethane, for the concentration of volatile organic compounds (VOC) (to measure total carbon as propane); and Reference Method 20 for the concentrations of nitrogen oxide (NO_x) and oxygen (O_2) or equivalent methods.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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Fuel sampling using the methods and procedures of 40 CFR 60.335(d) may be conducted in lieu of stack sampling for SO₂. If fuel sampling is used, compliance with New Source Performance Standards (NSPS), Subpart GG, SO₂ limits shall be based on 100 percent conversion of the sulfur in the fuel to SO₂. Any deviations from those procedures must be approved by the TNRCC Executive Director prior to sampling. The TNRCC Executive Director or his designated representative shall be afforded the opportunity to observe all such sampling.

The holder of this permit is responsible for providing sampling and testing facilities and conducting the sampling and testing operations at his expense.

- A. The TNRCC Arlington Regional Office shall be contacted as soon as testing is scheduled but not less than 45 days prior to sampling to schedule a pretest meeting.

The notice shall include:

- (1) Date for pretest meeting.
- (2) Date sampling will occur.
- (3) Name of firm conducting sampling.
- (4) Type of sampling equipment to be used.
- (5) Method or procedure to be used in sampling.
- (6) Procedure used to determine turbine loads during and after the sampling period.

The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test reports. A written proposed description of any deviation from sampling procedures specified in permit conditions, TNRCC, or EPA sampling procedures shall be made available to the TNRCC prior to the pretest meeting. The TNRCC Regional Director or the Manager of the TNRCC Austin Enforcement Division, Air Section, Engineering Services Team shall approve or disapprove of any deviation from specified sampling procedures. Requests to waive testing for any pollutant specified in this condition shall be submitted to the TNRCC Office of Permitting, Remediation, and Registration, Air Permits Division. Test waivers and alternate/equivalent procedure proposals for NSPS testing which must have EPA approval shall be submitted to the TNRCC Enforcement Division, Air Section, Engineering Services Team in Austin.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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- B. Air emissions from each gas turbine shall be tested while firing at full load for the ambient conditions at the time of testing. Air contaminants to be sampled and analyzed while at full load include (but are not limited to) NO_x, O₂, CO, NH₃, VOC, formaldehyde, SO₂, PM₁₀, and opacity. (Fuel sampling using the methods and procedures of 40 CFR 60.335[d] may be conducted in lieu of stack sampling for SO₂).
- C. Air emissions from each gas-fired turbine shall be tested while firing at three partial load conditions in the normal operating range of the gas turbine, including the minimum point in the range. Normal operating range is 50 percent to 100 percent of base load. Each tested load shall be identified in the sampling report. Air emissions to be sampled and analyzed while at partial load include (but are not limited to) NO_x, O₂, CO, and VOC.
- D. The holder of this permit shall demonstrate during the initial compliance testing that the best available control technology has been selected by demonstrating that the concentration of NO_x and CO in the stack gases from each gas turbine does not exceed 9 parts per million by volume on a dry basis (ppmvd) and 25 ppmvd, respectively, when corrected to 15 percent O₂.
- E. Sampling of each turbine unit shall occur within 60 days after achieving the maximum production rate at which each turbine will be operated but no later than 180 days after its initial start-up. The TNRCC and EPA may require additional sampling at other times as they deem appropriate.
- F. Within 60 days after the completion of the testing and sampling required for each turbine unit herein, copies of the sampling report shall be distributed as follows.

One copy to the TNRCC Arlington Regional Office.

One copy to the TNRCC Office of Permitting, Remediation, and Registration, Air Permits Division, Austin.

One copy to the EPA Region 6 in Dallas.

CONTINUOUS DETERMINATION OF COMPLIANCE FOR CO AND NO_x

- 10. The holder of this permit shall install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) to measure and record the concentrations of NO_x, CO, and diluent gas (O₂ or carbon dioxide) at each gas-fired turbine's exhaust stack.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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- A. The CEMS shall meet the design and performance specifications, pass the field tests, and meet the installation requirements and the data analysis and reporting requirements specified in the applicable Performance Specification Nos. 1 through 9, 40 CFR 60, Appendix B. If there are no applicable performance specifications in 40 CFR 60, Appendix B, contact the TNRCC Office of Permitting, Remediation, and Registration, Air Permits Division in Austin for requirements to be met.
 - B. The CEMS shall meet the applicable quality-assurance requirements specified in 40 CFR 60, Appendix F, Procedure 1. All CEMS downtime of one-hour or greater shall be recorded by the CEMS. Any relative accuracy exceedances, as specified in 40 CFR 60, Appendix F, Section 5.2.3, and any CEMS downtime in excess of four hours shall be reported to the appropriate TNRCC Regional Director, and necessary corrective action shall be taken. Supplemental stack concentration measurements may be required at the discretion of the appropriate TNRCC Regional Director.
 - C. The monitoring data shall be reduced to hourly average values at least once everyday, using a minimum of four equally-spaced data points from each one-hour period. Two valid data points shall be generated during the hourly period in which zero and span is performed.
 - D. All monitoring data and quality-assurance data shall be maintained by the source for a period of two years and shall be made available to the TNRCC Executive Director or his designated representative upon request. The data from the CEMS may, at the discretion of the TNRCC, be used to determine compliance with the conditions of this permit. Hourly average concentrations from the gas-fired turbines shall be summed to tons per year and used to determine compliance with the emission limits of this permit.
 - E. The TNRCC Arlington Regional Office shall be notified at least 30 days prior to any required relative accuracy test audit in order to provide them the opportunity to observe the testing.
 - F. If applicable, the CEMS will be required to meet the design and performance specifications, pass the field tests, and meet the installation requirements and data analysis and reporting requirements specified in the applicable performance specifications in 40 CFR 75, Appendix A.
11. The holder of this permit shall additionally install, calibrate, maintain, and operate continuous monitoring systems to monitor and record the average hourly fuel consumption in the gas turbines. The systems shall be accurate to ± 5.0 percent of the units maximum flow.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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12. The holder of this permit shall monitor the fuels fired in the equipment authorized by this permit for fuel-bound sulfur as specified in 40 CFR 60.334(b). Any request for a custom monitoring schedule shall be made in writing and directed to the TNRCC Executive Director of the TNRCC although authority for granting such custom schedules remains with the EPA. Any custom schedule approved by EPA pursuant to 40 CFR 60.334(b) will be recognized as enforceable conditions of this permit provided that the holder of this permit demonstrates that the conditions of such custom schedule will be adequate to demonstrate continuous compliance with the attached MAERT.

RECORDKEEPING REQUIREMENTS

13. The following records shall be kept at the plant for the life of the permit. All records required in this permit shall be made available at the request of personnel from the TNRCC, EPA, or any air pollution control agency with jurisdiction.
 - A. A copy of this permit.
 - B. Permit application dated February, 1999 and the additional information supplied for the permit review.
 - C. A complete copy of the testing report and records of the initial performance testing completed pursuant to Special Condition No. 9 to demonstrate initial compliance.
 - D. Stack sampling results or other testing that may be conducted on units authorized under this permit after the date of issuance of this permit.
14. The following information shall be made and maintained by the holder of this permit in a form suitable for inspection for a period of two years after the data are obtained and shall be made immediately available upon request to representatives of the TNRCC, EPA, or any local air pollution control program having jurisdiction:
 - A. Records of the hours of operation and daily quantity of natural gas fired in the turbines to demonstrate compliance with Special Condition No. 3.
 - B. A copy of the contractual fuel quality analysis agreement with the natural gas supplier shall be kept to demonstrate compliance with total sulfur limitations of Special Condition No. 1. If the natural gas supplier changes, the new contractual agreement must be kept.

SPECIAL CONDITIONS

Permit Nos. 40619 and PSD-TX-933

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- C. Records of fuel sampling conducted pursuant to Special Condition No. 12.
- D. Raw data files of all CEMS data including calibration checks and adjustments and maintenance performed on these systems of devices in a permanent form suitable for inspection.
- E. Records of the CEMS data required by Special Condition No. 10D.
- F. Records of reporting pursuant to Special Condition Nos. 15, 16, and 17.

REPORTING

- 15. The holder of this permit shall submit to the TNRCC Arlington Regional Office a quarterly report that summarizes quarterly reports sent to the Air Enforcement Branch of EPA in Dallas pursuant to 40 CFR 75. In addition, each quarterly report submitted to the TNRCC shall contain the hours of operation of the facility and a report summary of the periods of noncomplying emissions and CEMS downtimes by cause. The CEMS downtimes that exceed 72 hours shall be reported to the TNRCC Arlington Regional Office either verbally or in writing no later than 24 hours after the 72 hour period ends.
- 16. For the purposes of reporting pursuant to Special Condition No. 15, noncomplying emissions from the gas turbines may be defined as follows:
 - A. Noncomplying emissions of NO_x or CO may be defined as each one-hour period of operation, except during start-up or shutdown (for the gas turbine, start-up or shutdown is defined as turbine operation at less than 50 percent of base load, not to exceed three hours) during which the average emissions, as measured and recorded by the CEMS, exceed the emission limitations specified in this permit.
 - B. Noncomplying annual emissions may be defined as a rolling 12-month period during which the 12-month cumulative emissions exceeds the annual limits specified in the attached MAERT.
 - C. For any period of operation except start-up or shutdown during which the CEMS is unable to provide valid hourly emissions concentrations, noncomplying emissions may be defined as each hourly period for which the predicted emissions, based upon replacement data gathered in accordance to 40 CFR 60 or 75, exceed the emission limitations specified in the attached MAERT.

SPECIAL CONDITIONS

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- D. Noncomplying emissions of SO₂ may be defined as emissions resulting from firing fuel which is found to contain sulfur in excess of the limits of Special Condition No. 1 or which indicates exceedance of the SO₂ limitation found in the attached MAERT, based on 100 percent conversion of the sulfur in the fuel to SO₂ and by exceeding firing at base load.
 - E. Noncomplying emissions of PM₁₀ may be defined as emissions resulting from firing non-permitted fuels.
17. If the average NO_x or CO stack outlet emission rate exceeds the maximum allowable emissions rate for more than one hour, the holder of this permit shall investigate and determine the reason for the exceedance and, if needed, make necessary repairs and/or adjustments as soon as possible. If the NO_x or CO emission rate exceeds the emission rate in the MAERT for more than 24 hours, the permit holder shall notify the TNRCC Regional Office either verbally or with a written report detailing the cause of the increase in emissions and all efforts being made to correct the problem.

Dated _____

EMISSION SOURCES - MAXIMUM ALLOWABLE EMISSION RATES

Permit Nos. 40619 and PSD-TX-933

This table lists the maximum allowable emission rates and all sources of air contaminants on the applicant's property covered by this permit. The emission rates shown are those derived from information submitted as part of the application for permit and are the maximum rates allowed for these facilities. Any proposed increase in emission rates may require an application for a modification of the facilities covered by this permit.

AIR CONTAMINANTS DATA

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates *	
			lb/hr	TPY
S-1 (TS-1)	GE Model 7241FA Gas Turbine (Temporary Stack)	NO _x	63.0	254.1
		CO	31.0	122.7
		SO ₂	10.5	5.0
		VOC	3.0	12.3
		PM/PM ₁₀ (4)	18.0	78.9
		H ₂ SO ₄	0.8	0.4
S-2 (TS-2)	GE Model 7241FA Gas Turbine (Temporary Stack)	NO _x	63.0	254.1
		CO	31.0	122.7
		SO ₂	10.5	5.0
		VOC	3.0	12.3
		PM/PM ₁₀ (4)	18.0	78.9
		H ₂ SO ₄	0.8	0.4
S-3	GE Model 7121EA Gas Turbine	NO _x	35.0	140.2
		CO	58.0	232.2
		SO ₂	6.0	2.9
		VOC	2.0	7.9
		PM/PM ₁₀ (4)	14.0	61.3
		H ₂ SO ₄	0.5	0.3
S-4	GE Model 7121EA Gas Turbine	NO _x	35.0	140.2
		CO	58.0	232.2
		SO ₂	6.0	2.9
		VOC	2.0	7.9
		PM/PM ₁₀ (4)	14.0	61.3
		H ₂ SO ₄	0.5	0.3
Fugit EPN-5	Piping Fugitives (5)	VOC	0.44	1.99
C-1	Cooling Tower	PM/PM ₁₀	1.45	6.36

EMISSION SOURCES - MAXIMUM ALLOWABLE EMISSION RATES

- (1) Emission point identification - either specific equipment designation or emission point number from plot plan.
- (2) Specific point source name. For fugitive sources use area name or fugitive source name.
- (3) VOC - volatile organic compounds as defined in 30 Texas Administrative Code Section 101.1
NO_x - total oxides of nitrogen
SO₂ - sulfur dioxide
PM - particulate matter, suspended in the atmosphere, including PM₁₀.
PM₁₀ - particulate matter equal to or less than 10 microns in diameter. Where PM is not listed, it shall be assumed that no particulate matter greater than 10 microns is emitted.
CO - carbon monoxide
H₂SO₄ - sulfuric acid
- (4) Particulate matter includes condensibles (both front-half and back-half of the sample train).
- (5) Fugitive emissions are an estimate only.

* Emission rates are based on and the facilities are limited by the following maximum operating schedule:

Hrs/day 24 Days/week 7 Weeks/year 52 or Hrs/year 8,760

Dated _____